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FM AMCONSUL LAGOS
TO RUEHC/SECSTATE WASHDC 0670
INFO RUEHUJA/AMEMBASSY ABUJA 0275
RHMCSUU/DEPT OF ENERGY WASHINGTON DC
RUEHZK/ECOWAS COLLECTIVE
RUEAIIA/CIA WASHINGTON DC
RHEFDIA/DIA WASHINGTON DC

UNCLAS LAGOS 000171

SENSITIVE
SIPDIS

DOE FOR GPERSONS, CHAYLOCK
TREASURY FOR DPETERS, RHALL, RABDULRAZAK
COMMERCE FOR KBURRESS
USDOC FOR 3130/USFC/OIO/ANESA/DHARRIS
STATE PASS USTR FOR LISER, AGAMA
STATE PASS USAID FOR NFREEMAN, GBERTOLIN
STATE PASS OPIC FOR ZHAN, MSTUCKART
STATE PASS TDA FOR LFITTS, PMARIN
STATE PASS EXIM FOR JRICHTER

E.O. 12958: N/A

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SUBJECT: NIGERIA: APPEALS COURT REJECTS ELECTION TRIBUNAL VERDICT
AND ORDERS A RETRIAL

¶1. (SBU) SUMMARY: A Federal Appeals Court has ordered a new hearing into allegations by Action Congress (AC) candidate Rauf Aregbesola that vote rigging and ballot tampering led to the April 14, 2007 election of Osun State Governor Olagunsoye Oyinlola of the Peoples Democratic Party (PDP). The court ruled that the election tribunal's failure to accept vital documentary evidence presented by Aregbesola amounted to a miscarriage of justice. It directed the President of the Appeals court to constitute a new election panel to re-examine the petition. Unless, in the course of electoral reform, the electoral review process is also fixed, corrupt politicians will continue to use the lengthy court process to delay their removal from office. End summary

¶2. (U) On March 30, a Federal Court of Appeal rejected a ruling by a lower court and ordered a retrial of the petition filed by AC candidate Rauf Aregbesola challenging the outcome of the April 14, 2007 election of Governor Olagunsoye Oyinlola in Osun State. The Court directed the President of the Appeals Court to establish another tribunal to re-visit the case. In its decision, the federal court determined that the lower court erred when it rejected vital documents, including a certified police report, presented by Aregbesola's lawyers. It chided the tribunal for rejecting a forensic expert's report demonstrating multiple thumb printing of ballot papers and other irregularities during the election. The court described the tribunal's decision to uphold the election Governor Oyinlola and its treatment of Aregbesola's petition as "tainted, perverse and lacking in substantial justice".

¶3. (U) On July 15, 2008, the election tribunal had dismissed Aregbesola's petition on the grounds that he could not provide credible evidence to support his claim of irregularities during the election and upheld the April 14, 2007 election of Governor Oyinlola. The tribunal ruling was delivered amidst media allegations that the tribunal judges had improper dealings with Governor Oyinlola's attorneys. A national newspaper reported that it has evidence of several telephone conversations between the judges and the Governor's lawyers. Following this allegation, Aregbesola's legal team requested that the tribunal members disqualify themselves from the trial and allow a new team to take over. The tribunal dismissed the lawyers' petition and delivered its judgment on July 15.

¶4. (SBU) COMMENT: The Appeals court ruling on this case is unique in its ordering of a retrial of a previous process that lasted more than a year. Going by the long delays witnessed during similar

trials, the setting up of a new tribunal and the retrial of Aregbesola's petition could take yet another year. Any appeal arising from that process could take another six months. Should his election be overturned at the end of this process, Governor Oyinlola will have served nearly a full term as a wrongful winner of an election. Without an electoral reform that properly addresses this flaw in the appeal process, powerful politicians and political office seekers would consider it prudent to manipulate elections in their favor believing that they would at least occupy their positions for a significant period while their cases are argued in the courts. This is clearly not the goal of any credible electoral review process. End summary